



OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467		
DIN- 20240971ML0000111C3D		
A	File No.	GEN/ADJ/COMM/95/2020-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/DPB/22/2024-25
C	Passed by	Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	09.09.2024
E	Date of Issue	09.09.2024
F	SCN NO. & Date	S/10-08/Adj./Commr/Palmon/2020-21 dated 05.11.2020
G	Noticee / Party / Importer / Exporter	M/s. Palmon Exports, KASEZ

- यह मूल आदेश संबंधित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

" सीमा शुल्क आयुक्त (अपील),
 7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009"
 "THE COMMISSIONER OF CUSTOMS (APPEALS),
 Having his office at 7th Floor, Mridul Tower, Behind Times of India,
 Ashram Road, Ahmedabad-380009."

- उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
- उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए।
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –
 (i) उक्त अपील की एक प्रति और
A copy of the appeal, and
 (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ब्याज/दण्ड/जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
- अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

- इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Brief facts of the Case

M/s Palmon Exports (hereinafter referred to as "the noticee"), situated at Shed No. 186-187, Sector I, Kandla Special Economic Zone, Gandhidham-370230, (hereinafter referred to as "KASEZ") is engaged in the activity of manufacturing of all types of ready-made garments and madeups. The unit was issued Letter of Approval LoA No.KASEZ/Admn/2/858/80/Vol. II dated 24.05.2001 (**RUD-1 to the SCN**) as amended. Later on, the LoA of the noticee was broad-banded and trading activity was also included in the said LoA, which is valid till 31.10.2020.

1.1 Whereas, the noticee had filed a Bill of Entry No.1003629 dated 09.04.2020 (**RUD-2 to the SCN**), wherein the noticee had declared the description of goods as "*ASSORTED TEXTILES KNITTED AND WOVEN ASSORTED SEWING THREADS CLASSIFIABLE UNDER 60032000*", which was assessed by the Appraising Officer, KASEZ on 13.04.2020. The consignment was transshipped through container No.BEAU4602301, from Mundra port to KASEZ, Gandhidham and entered into KASEZ on 07.05.2020. On physical verification of seal intact with the container, the number was 'A439805', however, as per the bill of entry the seal number was declared as 'A434805'. Thus, there was a mis-match of seal number on the container. Therefore, the goods of the said container were taken up for 100% examination. During the examination, it was also observed by the Preventive Officer, KASEZ that the most of the goods appeared to be different from those declared in the Bill of Entry No. 1003629 dated 09.04.2020. It was also observed that weight of goods declared in said Bill of Entry was 15105 Kgs, whereas as per the weighment slip (**RUD 3 to the SCN**) the weight of the goods was 12070 Kgs. Thus, there was shortage of the goods. The Deputy Commissioner of Customs, KASEZ after looking into matter, handed over the matter to the Preventive & Intelligence Section, KASEZ for investigation purpose.

2.0 During the course of investigation, a statement of the truck driver Sh. Jamaludin Ansari S/o Shahid Hussain, r/o Bihar, who brought the transshipped container No. BEAU4602301 from Mundra Port to KASEZ was recorded under section 108 of the Customs Act, 1962 on 08.05.2020 (**RUD-4 to the SCN**) wherein Shri Jamaludin Ansari, inter alia, stated that the goods belonged to M/s. Palmon Exports, KASEZ and he had brought the container directly from Mundra to KASEZ. The seal was not changed during the course of transportation from Mundra to KASEZ.

3.0 The officers of the Preventive & Intelligence Section visited the premises of the noticee for examination of the goods imported vide the Bill of Entry No. 1003629 dated 09.04.2020 on 08.05.2020 but the same could not be done as Shri Mukesh Joshi, Partner of the noticee requested to take the inventory and detailed stock of the goods next day, i.e., on 09.05.2020, as there were no labour/fork lift available with them. The request of Sh. Mukesh Joshi was acceded to by the officers of Preventive & Intelligence Section, KASEZ for carrying out the examination on 09.05.2020. Thus, the goods were placed under detention vide detention order issued from F. No. KASEZ/CUS/P&I/Misc/2018-19 dated 08.05.2020 (**RUD-5 to the SCN**).

3.1 The officers of the Preventive & Intelligence Section, KASEZ along with two Panchas visited the premises of the noticee on 09.05.2020, for detailed examination of the goods imported vide Bill of entry No. 1003629 dated 09.04.2020. Shri Mukesh Joshi was requested to get the goods segregated and place them in order to help in the examination and quantification of the goods. Shri Mukesh Joshi got the goods segregated with the help of laborers but did not agree for the weighment of the goods, as sufficient laborers were not available. The officer of the Preventive Section, KASEZ visually examined the goods and observed that the said goods were not in accordance with the declared description of the goods in the said Bill of Entry. The goods were in assorted condition and were lying in premises of the noticee and at the backward godown of the premises of the noticee. Therefore, only quantity of the goods was counted. There were 11 different types of goods imported vide Bill of Entry No. 1003629 dated 09.04.2020, the details of which are as detailed below.

Sr. No .	Description of Goods	Quantity	Remarks
(1)	(2)	(3)	(4)
1	Trimmed waste (Black) (4CM)	47 Rolls	Shri Mukesh Joshi
2	White Net Fabric Roll (48 CM)	803 Rolls	denied for the
3	Laminated Back (Gray Colour) Roll (152 CM)	33 Rolls	weighment of goods
4	Leatherette Rolls (152 CM)	06 Rolls	due to unavailability of
5	Laminated Back (Black Colour) Roll(152 CM)	27 Rolls	sufficient labourers.
6	Black Colour Roll (152 CM)	17 Rolls	
7	Silver Colour Roll (152 CM)	10 Rolls	
8	White Stretchable Fabric Roll (78CM)	05 Rolls	
9	Cream Colour Fabric Rolls (152CM)	04 Rolls	
10	Loose Fabric	05 Cartons	
11	Thread Waste	11 Cartons	

3.2 During the course of examination, it was observed that similar kind of goods, like those imported vide Bill of Entry No.1003629 dated 09.04.2020, were also lying in the premise of the noticee. On being enquired about those goods, Shri Mukesh Joshi informed that the said goods had been imported vide Bill of Entry No.1014089 dated 01.10.2019 (**RUD-6 to the SCN**). Then the relevant documents in respect of import Bill of Entry No.1014089 dated 01.10.2019 were sought from Shri Mukesh Joshi and the same was provided by him to the officers. On scrutiny of documents provided, it was found that though the physical appearance & description of these goods imported vide Bill of Entry No. 1014089 dated 01.10.2019, were similar with some of the goods imported vide Bill of Entry No. 1003629 dated 09.04.2020, but their Customs Tariff Heading (CTH) were different from CTH as declared in Bill of Entry No.1003629 dated 09.04.2020. The goods imported vide Bill of Entry No.1003629 dated 09.04.2020, were declared as “*Assorted Textiles Knitted and Woven Assorted Sewing Threads Classifiable under 60032000 Raw Materials*” whereas the goods imported vide Bill of Entry No. 1014089 dated 01.10.2019 were declared as “*Assorted Textiles Rolls classified under 60052200- Raw material*”. On being asked about the said difference, Shri Mukesh Joshi could not give a satisfactory reason. Then detailed examination of the goods imported vide the Bill of Entry No.1014089 dated 01.10.2019 was carried out and it

was observed that the description of goods imported vide Bill of Entry No. 1014089 dated 01.10.2019 has also been mis-declared.

3.3 The details of the goods imported vide Bill of Entry No. 1014089 dated 01.10.2019, are tabulated below.

Sr. No	Description of Goods	Quantity	Remarks
(1)	(2)	(3)	(4)
1	Trimmed waste (Black) (4CM)	22 Rolls	Shri Mukesh Joshi denied for the weighment of goods due to inabilit
2	Black Colour Roll (152 CM)	93 Rolls	y of sufficient labours.
3	78 CM Fabric Roll (Red/Green/Black)	70 Rolls	
4	Leatherette Rolls (152 CM)	23 Rolls	

3.4 Therefore, on reasonable belief that the description of the goods imported vide Bill of Entry No.1014089 dated 01.10.2019 and Bill of Entry No.1003629 dated 09.04.2020 were mis-declared, the same were placed under seizure under Section 110 of the Customs Act, 1962, vide Seizure Memo F. No. KASEZ/Cus/P&I/8/Palmon/2020-21 dated 09.05.2020 (**RUD-7 to the SCN**).

3.5 For further investigation and to ascertain the exact nature of goods, the samples were drawn from both the consignments and were forwarded to CRCL Kandla for testing, vide test memo No. 884/ 09.05.2020, pertaining to goods imported vide Bill of Entry No. 1014089 dated 01.10.2019 and test memo No. 885/ 09.05.2020 pertaining to goods imported vide Bill of Entry No. 1003629 dated 09.04.2020. All the proceedings were recorded under Panchnama dated 09.05.2020. At the end of the panchnama proceedings, Shri Mukesh Joshi, made a call to another partner of the noticee, Shri Suniel Lahori, and after that incidence Shri Mukesh Joshi refused to co-operate with the Officers. Later on, Sh. Mukesh Joshi refused to sign the Panchnama and representative samples, which were duly signed by the officers and the two panchas.

3.6 As Shri Mukesh Joshi had refused to sign the panchnama drawn at the premises of the noticee on 09.05.2020 (**RUD-8 to the SCN**), the said panchnama drawn on 09.05.2020 was pasted at the premises of the Noticee on 10.05.2020 under another panchnama dated 10.05.2020 (**RUD-9 to the SCN**). Also the same was emailed to the noticee at the official email Id on 09.05.2020. Vide email dated 12.05.2020 Shri Suniel Lahori acknowledged panchnama dated 09.05.2020, but with a remark “*I disagree the content of this panchnama*” (**RUD-10 to the SCN**).

4.0 The test Results received from the CRCL, Kandla are reproduced as under:-

4.1 *Test result of Test memo No. 885/09.05.2020 in respect of Bill of Entry No. 1003629 dated 09.04.2020 (**RUD-11 to the SCN**)*

(Table 'A')

Item	Description of goods in test Memo No. 885/09.05.2020	Test result as received from CRCL, Kandla
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Sr. No.		
(1)	(2)	(3)
1	Trimmed waste (Black) (4CM)	The sample as received is a cut piece of strip greyish black pasted on one side with transparent plastic strip. It is composed of polyester non-woven fabric pasted on one side with polypropylene strip % composition % of polyester=61.9% by weight % of polypropylene= balance
2	White Net Fabric Roll (48 CM)	The sample is a cut piece of white knitted fabric. It is wholly composed of polyester filament yarns GSM= 73.8
3	Laminated Back (Gray Colour) Roll (152 CM)	The sample is a cut piece of sheet having transparent plastic film on one side and pasted on other side with multi colour non-woven fabric. It is composed of polyethylene film pasted on one side with polyester non woven fabric % of polyester= 59.7% Polyethylene= balance GSM as such = 513.0
4	Leatherette Rolls (152 CM)	The sample is a cut piece of flexible sheet having smooth brown surface on one side and black non woven fabric layer on other side. It is composed of polyester non-woven fabric pasted on one side with PVC film. % composition of polyester=51.5% %PVC= balance GSM as such= 658
5	Laminated Back (Black Colour) Roll(152 CM)	The sample is in cut piece of sheet, having smooth surface on one side and needle punch non woven fabric on other side. It is composed of polyster non woven fabric pasted on one side with polypropylene film. % composition of polyester= 75.9% Polypropylene= balance, GSM as such= 1074.2
6	Black Colour Roll (152 CM)	The sample is cut piece of grayish clack three layer sheet having non woven fabric on both side. it is composed of polypropylene film and pasted on both side with polyester non woven fabric. % composition of polyester=80.7% Polypropylene= balance GSM as such=991.5
7	Silver Colour Roll (152 CM)	The sample is a cut piece of three layer sheet, having silver colour on one side, middle layer foam and off white on other side. Upper layer composed of Polyester and other two layers composed of polyethylene % composition of Polyethylene=91.5% by weight Polyester= balance GSM as such= 283.9
8	White Stretchable Fabric Roll (78CM)	The sample is cut piece of white knitted fabric. It is wholly composed of polyester filament yarns GSM as such=289.4
9	Cream Colour Fabric Rolls (152CM)	The sample is cut piece of cream colour knitted fabric. It is wholly composed of cotton GSM= 268.5
10	Loose Fabric	The sample is a cut piece of off white knitted fabric. It is wholly composed of Polyester filament yarns GSM=79.8
11	Thread Waste	The sample is in the form of different white entangled yarns

	of assorted sizes. It is wholly composed of polyester filament yarns Denier= 493.8
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4.2 Test result of Test Memo No. 884/09.05.2020 in respect of Bill of Entry No. 1014089 dated 01.10.2019: **(RUD-12 to the SCN)**

(Table 'B')

Item Sr. No.	Description of goods in test Memo No. 884/09.05.2020	Test result as received from CRCL, Kandla
(1)	(2)	(3)
1	Trimmed waste (Black) (4CM)	The sample as received is in the form of black coloured strip containing one side non woven fabric made of polyester, bonded with transparent material on the other side made of polypropylene.
2	Black Colour Roll (152 CM)	The sample as received is a cut piece of black coloured flexible sheet. It is made of polypropylene sheet and bonded both side with polyester non woven fabric having following composition % of polyester 77.23% by weight % of polypropylene and adhesive = balance Avg. GSM of the sample 1021.2
3	78 CM Fabric Roll (Red/Green/Black)	The sample as received is in the form of cut piece of shining green coloured knitted fabric composed of polyester filament yarns Avg. GSM=115.0
4	Leatherette Rolls (152 CM)	The sample as received is in the form of flexible sheet having off white knitted fabric made of polyester filament yarn and cotton. Coated on one side with black coloured polymeric material composed of polyurethane % of coated material and adhesive=55.5% by weight % of polyester= 26.6% by weight % of cotton= balance Avg. GSM= 706.7

4.3 Further, the test result for both the test Memos was received from the CRCL, Kandla and as per Circular No. 30/2017-Cus. dated 18.07.2017, the test results were shared with the noticee, vide email dated 02.06.2020 **(RUD-13 to the SCN)** in respect of test memo No.885 dated 09.05.2020 and email dated 04.06.2020 **(RUD-14 to the SCN)** in respect of test memo No. 884 dated 09.05.2020.

4.4 On perusal of the test results received from the CRCL, Kandla in respect of both the Bills of Entry, it was observed that the description of the goods have been mis-declared in both the Bills of Entry.

4.5 In the Bill of Entry No. 1003629 dated 09.04.2020, the goods have been declared as “*Assorted textiles knitted and woven assorted sewing threads- raw materials classified under 60032000*”. As per the import/ export policy the CTH 60032000 pertains to goods having description as “*Knitted or crocheted fabrics of a width not exceeding 30 CM, other than those of heading 6001 or 6002—of cotton*”. On perusal of the test results received from the CRCL, Kandla in respect of subject Bill of Entry No. 1003629 dated 09.04.2020, it was observed that the items mentioned at Sr.

No. 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 of Table (A) does not contain any Cotton Composition. Thus, the goods mentioned at Sr. No. 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 of Table (A) could not be classified under 60032000. Further, the item mentioned at Sr.No.9 of the table A, contains cotton, but its width is exceeding 30 centimeter, hence, the same could not be classified under CTH 60032000.

5.0 To ascertain the classification of goods based on the test results and valuation of the goods, comments were sought from the Appraising officers of KASEZ, who vide U.O Note dated 11.06.2020 (**RUD-15 to the SCN**), informed the correct classification of the goods imported under Bill of Entry No.1003629 dated 09.04.2020, which is tabulated below:

(Table-C)

Item Sr. No.	Description of goods in test from CRCL, Kandla Memo No. 885/09.05.2020	Test result as received	CTH of Goods as per BoE	Correct CTH as per CRCL, Kandla report
(1)	(2)	(3)	(4)	(5)
1	Trimmed waste (Black) (4CM)	The sample as received is a cut piece of strip greyish black pasted on one side with transparent plastic strip. It is composed of polyester non-woven fabric pasted on one side with polypropylene strip % composition % of polyester=61.9% by weight % of polypropylene=balance	60032000	56031200
2	White Net Fabric Roll (48 CM)	The sample is a cut piece of white knitted fabric. It is wholly composed of polyester filament yarns GSM= 73.8	60032000	60059000
3	Laminated Back (Gray Colour) Roll (152 CM)	The sample is a cut piece of sheet having transparent plastic film on one side and pasted on other side with multi colour non-woven fabric. It is composed of polyethylene film pasted on one side with polyester non woven fabric % of polyester= 59.7% Polyethylene= balance GSM as such = 513.0	60032000	56031200
4	Leatherette Rolls (152 CM)	The sample is a cut piece of flexible sheet having smooth brown surface on one side and black non woven fabric layer on other side. It is composed of polyester non-woven fabric pasted on one side with PVC film. % composition of	60032000	56031200

		polyester=51.5% %PVC= balance GSM as such= 658		
5	Laminated Back (Black Colour) Roll(152 CM)	The sample is in cut piece of sheet, having smooth surface on one side and needle punch non woven fabric on other side. It is composed of polyester non woven fabric pasted on one side with polypropylene film. % composition of polyester= 75.9% Polypropylene= balance, GSM as such= 1074.2	60032000	56031300
6	Black Colour Roll (152 CM)	The sample is cut piece of grayish black three layer sheet having non woven fabric on both side. it is composed of polypropylene film and pasted on both side with polyester non woven fabric. % composition of polyester=80.7% Polypropylene= balance GSM as such=991.5	60032000	56031300
7	Silver Colour Roll (152 CM)	The sample is a cut piece of three layer sheet, having silver colour on one side, middle layer foam and off white on other side. Upper layer composed of Polyester and other two layers composed of polyethylene % composition of Polyethylene=91.5% by weight Polyester= balance GSM as such= 283.9	60032000	39181090
8	White Stretchable Fabric Roll (78CM)	The sample is cut piece of white knitted fabric. It is wholly composed of polyester filament yarns GSM as such=289.4	60032000	60069000
9	Cream Colour Fabric Rolls (152CM)	The sample is cut piece of cream colour knitted fabric. It is wholly composed of cotton GSM= 268.5	60032000	60062100/60062200
10	Loose Fabric	The sample is a cut piece of off white knitted fabric. It is wholly composed of Polyester filament yarns GSM=79.8	60032000	60063100
11	Thread Waste	The sample is in the form of different white entangled yarns of assorted sizes. It is wholly composed of polyester filament yarns Denier= 493.8	60032000	55051010

5.1 In the Bill of Entry No.1014089 dated 01.10.2019, the goods have been declared as “*Assorted Textiles Rolls-Raw material classified under 60052200*”. As per the import/ export policy the CTH 60052200 pertains to goods having description as “Warp Knit fabrics (Including those made on gallon knitting machines), other than those of heading 6001 to 604 –of cotton –dyed”. On perusal the test results received from the CRCL, Kandla in respect of subject Bill of entry, it was observed that the descriptions of the goods have been mis-declared. Items mentioned at Sr. No.1, 2 and 3 of Table (B) does not contain any Cotton Composition, as evident from the test result received from CRCL, Kandla. Thus, the goods mentioned at Sr. No.1, 2 and 3 of Table (B) could not be classified under 60052200. Further, the item mentioned at Sr.No.4 of the table-B, contains cotton, but it predominately contains polyester/ polyurethane. Hence, the same could not be classified under CTH 60052200 which pertains to Cotton.

5.2 To ascertain the classification of goods based on the test results and valuation of the goods, comments were sought from the Appraising officers of KASEZ, who vide U.O Note dated 11.06.2020 (**RUD-16 to the SCN**), informed the correct classification of the goods imported vide Bill of Entry No.1014089 dated 01.10.2019 which is tabulated below.

(Table-D)

Item Sr. No	Description of goods i Sr. No test Memo No. 884/09.05.2020	Test result as received from C RCL, Kandla	CTH of goods as per BoE	Correct CTH as per CRCL, Kandla report
(1)	(2)	(3)	(4)	(5)
1	Trimmed waste (Black) (4CM)	The sample as received is in the form of black coloured strip containing one side non woven fabric made of polyester, bonded with transparent material on the other side made of polypropylene.	60052200	56031200
2	Black Colour Roll (152 CM)	The sample as received is a cut piece of black coloured flexible sheet. It is made of polypropylene sheet and bonded both side with polyester non woven fabric having following composition % of polyester 77.23% by weight % of polypropylene and adhesive = balance Avg. GSM of the sample 1021.2	60052200	56031300
3	78 CM Fabric Roll (Red/Green/Black)	The sample as received is in the form of cut piece of shining green coloured knitted fabric composed of polyester filament yarns Avg. GSM=115.0	60052200	60059000
4	Leatherette Rolls (152 CM)	The sample as received is in the form of flexible sheet having off white knitted fabric made of polyester filament yarn and cotton. Coated on one side	60052200	56031200

	with black coloured polymeric material composed of polyurethane % of coated material and adhesive=55.5% by weight % of polyester= 26.6% by weight % of cotton= balance Avg. GSM= 706.7	
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5. From the above it transpired that the noticee had mis-declared the description of the goods imported vide above referred two Bills of Entry. The said goods have been imported as "raw material", i.e., the goods were imported for the purpose of manufacturing purpose by the noticee and not for any trading activity.

6.0 In order to arrive at the value of the goods, comments were sought from the Appraising officers of KASEZ, who vide U.O Note dated 11.06.2020, informed about the valuation of goods relying on data available on NIDB site. The same is detailed at column 5 of the Table-E and Table-F as tabulated below.

6.1 Further, the weighment of goods (item wise) imported vide Bill of Entry No. 1003629 dated 09.04.2020 was carried out at the unit premises under preventive supervision and the result are mentioned at column-4 of the Table-E, as tabulated below:

(Table 'E')

Sr. No	Description of Goods	Quantity	Weight in Kgs. as per Physical weissable Value in weighment conductn	Average Assesment Value in Rs. per Kg. ed under preventaive supervision as per NIDB data
(1)	(2)	(3)	(4)	(5)
1	Trimmed waste (Black) (4CM)	47 Rolls	1412.373	127
2	White Net Fabric Roll (48 CM)	803 Rolls	1189.92	1054
3	Laminated Back (Gray Colour) Roll (152 CM)	33 Rolls	2440	127
4	Leatherette Rolls (152 CM)	06 Rolls	2400	127
5	Laminated Back (Black Colour) Roll (152 CM)	27 Rolls	834.387	355
6	Black Colour Roll (152 CM)	17 Rolls	800	355
7	Silver Colour Roll (152 CM)	10 Rolls	164.43	156
8	White Stretchable Fabric Roll (78 CM)	05 Rolls	180.07	310
9	Cream Colour Fabric Rolls (152CM)	04 Rolls	58.75	383
10	Loose Fabric	05 Cartons	180.07	254
11	Thread Waste	11 Cartons	2410	35
	Total		12070	

6.2 Further, the weighment of goods (item wise) imported vide Bill of Entry No. 1014089 dated 01.10.2019 was carried out at the unit premises under preventive supervision and the results are mentioned at column 4 of the Table-F, as tabulated below:

(Table-F)

Sr. No	Description of Goods	Quantity	Weight in Kgs. as per Physical weighment conducted under preventive supervision	Average Assessable Value in Rs. per Kgs as per NIDB data as mentioned at Annexure-F
(1)	(2)	(3)	(4)	(5)
1	Trimmed waste (Black) (4CM)	22 Rolls	681.8	127
2	Black Colour Roll (152 CM)	93 Rolls	3290.5	355
3	78 CM Fabric Roll (Red/Green/Black)	70 Rolls	787.31	1054
4	Leatherette Rolls (152 CM)	23 Rolls	6580	127
	Total		11339.61	

7.0 Further, Shri Mukesh Joshi and Shri Suniel Lahori, both the partners of the noticee unit had tried to mislead/ non-cooperate with the department. Shri Suniel Lahori and Shri Mukesh Joshi vide email/ letters/ messages dated 07.05.2020 (**RUD-17 to the SCN**), 11.05.2020 (**RUD-18 to the SCN**), and Whatsapp messages dated 07.05.2020 (**RUD-19 to the SCN**) & dated 09.05.2020 (**RUD-20 to the SCN**) had tried to influence the investigation proceedings.

8.0 Shri Suniel Lahori, partner of the noticee, vide letter dated 26.05.2020 (**RUD 21 to the SCN**), at para 6 of the said letter admitted that there “could be a chance of misclassification”. Also at para-9 of the said letter, Shri Lahori, had admitted that “there it is artificial leather can be used to make jackets”. It is pertinent to mention here that the artificial leather is not classifiable under 60032000 as declared by the noticee. At para 9 of the said letter, he had admitted that “the heavy fabric can be stitched from all 4 sides and can be used to manufacture blanket”. It was noticed that the noticee was not having the valid LoA from KASEZ authorities to manufacture blankets.

9. Further, the weight of goods declared in Bill of Entry No. 1003629 dated 09.04.2020 was 15105 Kgs. whereas, the actual goods received as per the weighment slip was 12070 Kgs. In this regard, an explanation was sought from the noticee. Shri Suniel Lahori, vide letter dated 26.05.2020, informed that the matter was taken up with their foreign supplier and it was informed that the goods were to be loaded from two warehouses and due to lock down, foreign supplier could load the goods from one warehouse only. In support of their claim, Shri Suniel Lahori submitted the copy of weighment slip and other supporting documents. However, it appeared that it is only after thought of the noticee. The noticee had informed such shortage of goods only after the investigation initiated by the department. Even after the booking of the case, the noticee had not requested to amend the bills of entry. Thus, it was clear that the noticee had suppressed the facts in respect of description of goods.

10. Explanation 1(iii) to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 specifies certain reasons for which proper officer shall have powers to raise doubts on truth or accuracy of the declared value. These include mis-declaration in description and quality of goods and non-declaration of parameters

such as brand, grade, specifications which have relevance to value. In the instant cases, the noticee had mis-declared the description of the goods imported vide Bill of Entry No. 1003629 dated 09.04.2020 and Bill of Entry No. 1014089 dated 01.10.2019. The said goods have been imported with declaration as "raw material", The goods were imported for the purpose of manufacturing by the noticee and not for any trading activity. For these reasons the value declared by the importer was liable to be rejected under provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. For re-determination of value we had to use the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 sequentially. The identical goods were not available. Therefore, Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 could not be invoked. Import of similar goods has been noticed as mentioned in **Annexure-'F'** of the Show Cause Notice; therefore the value was to be re-determined in terms of the Rule 5 (Transaction value of similar goods) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which comes to **Rs. 1,25,33,978/-** (as per Annexure-A, B, C & D of the SCN).

From the facts discussed in the foregoing paras and material evidences available on record, it transpired that the noticee had resorted to mis-declaration of description of goods in the invoices and the documents filed before the Customs authority at the time of imports, with an intent to evade customs duty leviable thereon. Thus, the declared description and classification in respect of the said imported consignment of Bill of Entry No. 1014089 dated 01.10.2019 and Bill of Entry No. 1003629 dated 09.04.2020 filed by the noticee was found liable to be rejected and the same needed to be reclassified (as detailed in column 5 of the Table-C and Table-D, which had been admitted by the partners of the noticee vide letter dated 26.05.2020.

11. From the above discussion, it was clear that the noticee had failed to account for the short quantity of the goods than the declared quantity. The short receipt of the goods was never informed by the noticee to the customs at any point of time. The noticee had not accounted for the quantity short receipt in the mandatory as well as private records. The noticee was liable to pay customs duty on short quantity of the goods in terms of rule 34 of the SEZ Rules, 2006, but the noticee had not paid the customs duty till the date of issuance of SCN, therefore, the customs duty was liable to be recovered under section 28(4) of the Customs Act, 1962 read with rule 34 of the Special Economic Zone Rules, 2006. In regard to the short quantity of goods received vide Bill of Entry No. 1003629 dated 09.04.2020, it was presumed that the same has been cleared in DTA and the duty was required to be demanded on the short quantity in terms of provisions of Rule 34 of the SEZ Rules, 2006.

Further, as there were multiple goods received vide Bill of Entry No. 1003629 dated 09.04.2020 and the short shipment of 3035 Kgs was noticed, it was not possible to ascertain which type of goods of the said Bill of Entry were short shipped and the value of goods received in short quantity. Therefore, in the interest of the revenue, the goods fetching the highest value in the said Bill of Entry were assumed to be cleared in

DTA and same was taken in for consideration for calculating the duty demand. The details are mentioned at duty calculation sheet **Annexure-A of the SCN**.

12. Further, on perusal of the records of the SEZ online module, it was observed that the noticee had not filed any documents for Export/ DTA sales/ Intra zone sale of goods during the period i.e. from 01.10.2019 to 17.07.2020 (Date of filing of Bill of Entry No. 1014089 dtd 01.10.2019 and date of conducting of physical weighment of goods at the noticee's premises under preventive supervision). It was also observed that as per the physical weighment conducted under preventive supervision for goods imported vide Bill of Entry No. 1014089 dated 01.10.2019, goods weighing 11339.61 Kgs were found at the noticee premises, whereas the goods received vide said Bill of Entry was 14710 Kgs (**RUD-22 to the SCN**). Therefore, it appeared that the quantity of goods found short was cleared by the noticee clandestinely with intent to evade the payment of customs duty. Therefore, the customs duty was required to be recovered from the noticee under the provisions of Rule 34 of the SEZ Rules, 2006 read with section 28(4) of the Customs Act, 1962. Since, it was not possible to ascertain the value of goods cleared clandestinely. Therefore, in the interest of the revenue, goods fetching the highest value were considered to have been cleared in DTA and same was taken in for consideration for calculating the duty demand. The details were mentioned at duty calculation sheet **Annexure-B of the SCN**.

12.1 In view of the above discussion and material evidences available on records, it appeared that the noticee had contravened the provisions of Section 46(4) of the Customs Act, 1962, inasmuch as they had intentionally mis-declared the description of goods imported vide Bill of Entry No. 1003629 dated 09.04.2020 and Bill of Entry No. 1014089 dated 01.10.2019, thereby suppressing the correct description and classification of the imported goods, while filing the declaration, seeking clearance at the time of the importation of the impugned goods, as detailed in **Table-E and Table-F**. This act on the part of noticee had rendered the seized goods, liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. They have also mis-declared the value of the goods, therefore, the noticee is liable for penalty under Section 112(a) and (b) of the Customs Act, 1962.

13. It also appeared that the goods imported vide Bill of Entry No.1003629 dated 09.04.2020 and Bill of Entry No.1014089 dated 01.10.2019 by the Noticee and subsequently placed under seizure vide seizure memo dated 09.05.2020, were imported by mis-declaring the same as classified "*Assorted textiles Knitted and Woven Assorted Sewing threads*" and "*Assorted textiles Rolls*" and classifying the same under CTH 60003200 and CTH 60052200 respectively, as against the actual description of the goods falling under CTH (as mentioned in Column 5 of the Table-C and Table-D as detailed above). It appeared that the noticee had also deliberately mis-declared the value of the goods. Further, in respect of the Short quantity of the goods vide Bills of Entry No.1003629 dated 09.04.2020 and 1014089 dated 01.10.2019, the duty is required to paid as the same is assumed to have been cleared in DTA. Therefore, on the short quantity of seized goods total valued at Rs. **67,51,281/- in respect of**

aforesaid bills of entry, the total Customs Duty amounting to **Rs.11,17,337/-** needed to be recovered from the noticee under Section 28(4) of the Customs Act, 1962 read with Rule 34 of the SEZ Rules, 2006 along with applicable interest under section 28AA of the Customs Act, 1962. The details are as mentioned below:

(Table-G)

Sr. No.	Bill of entry No./ date	Short quantity received (In kgs)	Value of short quantity	Duty
1.	1014089/ 01.10.2019	3370.39	3552391	587921
2.	1003629/ 09.04.2020	3035	3198890	529416
		6405.39	6751281	1117337

Further, the noticee had knowingly and intentionally mis-declared the imported goods and filed documents with the Customs authorities, which they knew, were false and incorrect in respect of the description and quantity of the imported goods and also cleared the goods without payment of duty. By this way, the noticee had suppressed the facts from the department. Hence, the said acts on the part of them had rendered themselves liable for penalty under Section 114A of the Customs Act, 1962.

13.1 Further, Shri Suniel Lahori and Shri Mukesh Joshi had also knowingly and intentionally mis-declared the description and value of the goods with intent to evade the customs duty and filed the documents with the customs authorities, which they knew were false and incorrect. Hence, the said act on the part on them had rendered the goods liable for confiscation under section 111 (m) of the Customs Act, 1962. The said act of omission and commission on the part of Shri Suniel Lahori and Shri Mukesh Joshi both the partners of the noticee, have rendered themselves liable for penalty under Section 112 (a) & (b) of the Customs Act, 1962. Further, Shri Suniel Lahori and Shri Mukesh Joshi have not informed at any point of time regarding removal of DTA clearance of the goods to the customs authority. Thus they failed to comply with provisions of the Act. They had also filed the Bill of Entry with false description (mis-classification) and incorrect value of the goods. Therefore they were also liable to penalty under section 114AA of the Customs Act, 1962.

14. Summons dated 12.06.2020 (**RUD-23 to the SCN**) was issued to the partner of the Noticee. Shri Suniel Lahori, partner in the noticee unit vide his letter dated 18.06.2020 (**RUD-24 to the SCN**) informed that they did not want to be heard and informed that the matter may be decided on the basis of facts available with the department. Shri Suniel Lahori, Partner and Shri Mukesh Joshi, Partner, both of them looked after the day to day work of the noticee-unit. It also transpires that they were well aware of the facts of Mis-declaration as they are controlling the business activities. Also, both of them had tried to influence the investigation proceedings by their email/letters, Whatsapp messages and even not co-operated with the investigation by not acknowledging the panchnama conducted lawfully and by dishonoring the summons for investigation. The aforesaid acts of willful mis-statement and suppression of the description and value of the goods by Shri Suniel Lahori and Shri Mukesh Joshi clandestinely removed the goods, with a view to evade appropriate

Customs duty leviable thereon, as detailed in (**Annexure-A to D of the SCN**) have made the subject goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. Hence, the said acts on the part of them have rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

15. Now, therefore M/s Palmon Exports, Shed No. 186-187, Sector 1, KASEZ, Gandhidham was issued a Show Cause Notice, F. No. S/10-08/Adj/Commr/Palmon/2020-21 dated 05.11.2020 by the Additional Commissioner, Customs House, Kandla as to why:-

- i. The classification of the goods imported vide Bill of Entry No. 1003629 dated 09.04.2020 classified as "Assorted Textiles Knitted and Woven Assorted Threads under CTH 60032000" and Bill of Entry No. 1014089 dated 01.10.2019 classified as "Assorted Textiles Rolls under CTH 60052200" should not be rejected and the same should not be re-classified, as detailed in Column (5) of the Table 'C' and Table 'D', under the Customs Tariff Act, 1975;
- ii. Declared assessable value in the Bill of Entry No. 1003629 dated 09.04.2020 and Bill of Entry No. 1014089 dated 01.10.2019 should not be rejected under Rule 12 and the value should not be re-determined as **Rs.60,61,386/-** for Bill of Entry No.1003629 dated 09.04.2020 and **Rs.64,72,592/-** for Bill of entry No.1014089 dated 01.10.2019 in terms of the Customs Valuation Rules, 2007;
- iii. The **seized goods** imported vide Bill of Entry No. 1003629 dated 09.04.2020 valued at **Rs. 28,62,496.246 (as detailed in Annexure C)** and Bill of Entry No. 1014089 dated 01.10.2019 valued at **Rs.29,20,200.84/- (as detailed in Annexure D)**, should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962;
- iv. Penalty should not be imposed upon the Noticee, under the provisions of Section 112(a) and (b) of the Customs Act, 1962 in respect of the seized goods as above;
- v. Customs Duty amounting to **Rs. 11,17,337/-** (Rupees Eleven Lakhs Seventeen Thousand Three Hundred and Thirty Seven Only), **as detailed in Table-G read with Annexure-A & B**, should not be demanded and recovered on the **Short Quantity of goods** in respect of Bills of Entry No. 1003629 dated 09.04.2020 and 1014089 dated 01.10.2019 under Section 30 of the SEZ Act, 2005 read with Rule 34 of the SEZ Rules, 2006 and Section 28(4) of the Customs Act, 1962;
- vi. Interest should not be charged and recovered from them under Section 28AA of the Customs Act, 1962 on the duty demanded at (v) above;
- vii. Penalty should not be imposed upon the noticee, under the provisions of Section 114A of the Customs Act, 1962 in respect of the short quantity of goods equal to duty at (v) above and interest at (vi) above;

15.1 Further, Shri Suniel Lahori and Shri Mukesh Joshi, Partners of M/s Palmon Exports, Shed No. 186-187, Sector-I, Kandla Special Economic Zone (KASEZ), Gandhidham-370230 were issued a Show Cause Notice F. No. S/10-08/Adj/Commr/Palmon/2020-21 dated 05.11.2020 by the Additional Commissioner, Customs House, Kandla as to why:-

- i. Penalty should not be imposed upon him under the provisions of Section 112(a) and (b) of the Customs Act, 1962;
- ii. Penalty should not be imposed upon him under the provisions of Section 114AA of the Customs Act, 1962;
- iii. Penalty should not be imposed upon him under the provisions of Section 117 of the Customs Act, 1962.

16. The SCN was adjudicated vide OIO No. KDL/ADC/SK/04/2021-22 dated 02.05.2021 issued by Additional Commissioner, Customs Kandla Commissionerate, wherein following order was passed by Adjudicating authority.

(i) I reject the classification of the imported goods imported by M/s. Palmon Exports, KASEZ, Gandhidham under Bill of Entry No. 1003629 dated 09.04.2020 classified as "Assorted Textiles Knitted and Woven Assorted Threads under CTH 60032000" and Bill of Entry No. 1014089 dated 01.10.2019 classified as 'Assorted Textiles Rolls under CTH 60052200" and I order to re-classify the same as detailed in column (5) of the Table-C and Table-D under the Customs Tariff Act,1975.

(ii) I reject the declared assessable value in respect of items imported under Bill of Entry No. 1003629 dated 09.04.2020 and Bill of Entry No. 1014089 dated 01.10.2019 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007 and order to re-determine the value as Rs. 60,60,38d/- for Bill of Entry No. 1003629 dated 09.04.2020 and Rs. 64,72,592/- for Bill of Entry No. 1014089 dated 01.10.2019 under sub-section (l) of Section 14 of the Customs Act, 1962 read with Rule5 of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007.

(iii) I confiscate the seized goods imported under Bill of Entry No. 1003629 dated 09.04.2020 valued at Rs. 28,62,496.246/- (as detailed in Annexure-C to the SCN) and Bill of Entry No. 1014089 dated 01.10.2019 valued at Rs. 29,20,200.84/- (as detailed in Annexure-D to the SCN) under the provisions of Section 111(m) of the Customs Act,1962. However, I give an option to redeem the goods on payment of redemption fine of Rs. 6,00,000/- (Rs. Six Lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

(iv) I Impose penalty of Rs. 1,20,000/- (Rupees One Lakh Twenty Thousand) on M/ s. Palmon Exports, KASEZ, Gandhidham under Section 112 of the Customs Act, 1962.

(v) I confirm the demand and order to recover the Customs Duty amounting to Rs. 11,17,337/- (Rupees Eleven Lakhs Seventeen Thousand Three Hundred and Thirty Seven Only)from the noticee as detailed in Table-G read with

Annexure A & B to the SCN on the short quantity of goods in respect of Bill of Entry No. 1003629 dated 09.04.2020 and Bill of Entry No. 1014089 dated 01.10.2019 under Section 28(4) of the Customs Act, 1962 read with Rule 34 to the SEZ Rules, 2006 along with applicable interest under Section 28AA of the Customs Act, 1962.

(vi) I Impose a penalty equal to duty and interest applicable thereon as mentioned in (v) above on M/ s. Palmon Exports, KASEZ, Gandhidham under Section 114A of the Customs Act, 1962.

(vii) I Impose a penalty of Rs. 60,000/- (Rupees Sixty Thousand) on Shri Suniel Lahori partner of M/ s. Palmon Exports, KASEZ, Gandhidham under Section 112 of the Customs Act, 1962.

(viii) I Impose a penalty of Rs. 12,50,000/- (Rupees Twelve Lakhs Fifty Thousand) on Shri Suniel Lahori partner of M/s. Palmon Exports, KASEZ, Gandhidham under Section 114AA of the Customs Act, 1962.

(ix) I Impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs) on Shri Suniel Lahori partner of M/ s. Palmon Exports, KASEZ, Gandhidham under Section 117 of the Customs Act, 1962.

(x) I Impose penalty of Rs. 60,000/- (Rupees Sixty Thousand) on Shri Mukesh Joshi partner of M/s. Palmon Exports, KASEZ, Gandhidham under Section 112 of the Customs Act, 1962.

(xi) I Impose penalty of Rs. 12,50,000/- (Rupees Twelve Lakhs Fifty thousand) on Shri Mukesh Joshi partner of M/ s. Palmon Exports, KASEZ, Gandhidham under Section 114AA of the Customs Act, 1962.

(xii) I Impose penalty of Rs. 1,00,000/- (Rupees One Lakh) on Shri Mukesh Joshi partner of M/ s. Palmon Exports, KASEZ, Gandhidham under Section 117 of the Customs Act, 1962.

17. Aggrieved by the said OIO dated 02.05.2021, Noticee appealed before Commissioner(Appeal) , who vide order no. OIA no. KDL-CUSTM-000-149-151-23-24 dated 26.07.2023 remanded the matter to the adjudicating Authority by passing following order-

"In view of the above, the appeals are disposed off in the following terms are as under:-

(i) The contention of the appellant that assessment order cannot be re-opened by SCN, as it has not been challenged at any point, is hereby rejected.

(ii) The issue of mis-classification and mis-declaration of the seized goods, as discussed in Para 8.2 and Para 8.3 above, is upheld.

(iii) The issue of clandestine removal of the impugned goods and providing the copy of weighment slips to the appellants is remanded to the adjudicating authority, who shall examine the available facts, documents, submission and pass speaking order afresh following principles of natural justice and adhering to the legal provisions.

(iv) The contention of the appellant that penalty cannot be imposed on Appellant Nos. 2 and 3, who were partners in the firm (Appellant No. 1)

simultaneously when penalty was already imposed on the partnership firm, is partly allowed i.e. in respect of penalty imposed under Section 112 and 114AA of the Customs Act, 1962. Further, the penalty imposed on the Appellant Nos. 2 and 3 under Section 117 of the Customs Act, 1962 is upheld."

18. The order of Hon'ble Commissioner (A) dated 26.07.2023 has been accepted by the department on 25.10.2023.

19. In view of Commissioner(A) direction Personal hearing was fixed on 10.04.2024, wherein he requested OIO me may be issued after their written submission. Thereafter, they have submitted vide their written submission dated 21.05.2024 that they do not want physical possession of their goods and goods may be sold as per Customs Act, 1962 and decide the matter as per the direction of Commissioner (A) order No. KDL-CUSTM-000-149-151-23-24 dated 26.07.2023.

DISCUSSION AND FINDINGS:

20. I have carefully gone through the Show Cause Notice dated 05.11.2020, OIO dated 02.05.2021 and OIA dated 26.07.2023.

21. The issues involved in the instant case are related to mis-declaration, mis-classification and valuation of the impugned goods imported vide Bills of Entry Nos. 1003629 dated 09.04.2020 and 1014089 dated 01.10.2019. It is seen that the original Adjudicating authority vide OIO dated 02.05.2021 had decided the issues of mis-declaration, mis-classification and undervaluation of the imported goods and the same was duly upheld by the Hon'ble Commissioner (A) vide order dated 26.07.2023. Further, the Hon'ble Commissioner (A) has upheld the imposition of penalties under Section 117 of the Customs Act, 1962 upon both the partners. However, the Hon'ble Commr.(A) has set aside the penalties imposed under Sections 112 and 114AA of the Customs Act, 1962. It is further noted that the noticees did not place any contention/argument before the Hon'ble Commissioner (A) in respect of confiscation of the seized goods under Section 111(m) and imposition of redemption fine vide Para 31(iii) of the OIO dated 02.05.2021 under Section 125 of the CA, 1962. Thus the above issues are settled and requires no discussion and shall have the same effect as discussed in OIO dated 02.05.2021 read with OIA dated 26.07.2023.

22. Therefore, in pursuance of the directions imparted by the Hon'ble Commissioner (Appeals) vide OIA dated 26.07.2023, the issues, to be decided, before me are:

- (i) Issue of clandestine removal of goods in light of the submission made by the noticee i.e. M/s. Palmon Exports before the Hon'ble Commissioner (Appeals).
- (ii) Consequently, Demand and recovery of Customs duty amounting to Rs. 11,17,337/- on the goods found short in quantity in respect of Bills of Entry Nos. 1003639 dated 09.04.2020 and 1014089 dated 01.10.2019 under Section 28(4) of the Customs Act, 1962 read with Rule 34 of the SEZ Rules, 2006;

- (iii) Liability of Interest on Customs duty demanded under Section 28AA of the Customs Act, 1962 above;
- (iv) Liability of the Noticee to penalty under the provisions of Section 114A of the Customs Act, 1962;

23. In this regard, it is seen that the Hon'ble Commissioner (A), in its order dated 26.07.2023 has given specific findings in Para 8.4 and 8.5 of the order which needs to be considered in order to decide the issue of clandestine removal of goods.

24.1 In respect of **BoE No. 1 i.e. 1003629 dated 09.04.2020**, the Hon'ble Commissioner (A) in Para 8.4 of the order has observed as reproduced below:-

“8.4 As regards the third issue, whether goods Imported vide BOE-1 were removed clandestinely before its receipt in the premises of Appellant No. 1 at KASEZ, it is observed that the adjudicating authority has recorded his findings at Para 22 of the impugned order. It has been observed that the declared weight in BOE-1 was 15,105 Kgs as per the BOE-1, whereas on weighment the total weight is found to be 12070 Kgs. This observation is based on the weighment Slip dated 07.05.2020 issued by Sky High Weigh- Bridge at the gate of KASEZ mentioning Gross Weight Time 12:20:55 Hrs (before unloading) and Tare Weight Time 20:13:32 Hrs (after unloading). However, I find that nowhere in the impugned order there is any mention of Weighment Slip dated 07.05.2020 issued by Mundra International Container Terminal Private Limited, showing the net weight of the goods imported vide BOE-1 as 12,020 Kgs at Mundra, mentioning Tare Weight Time 03:25 Hrs (before loading) and Gross Weight Time 05:18 Hrs (after loading). Further, upon going through the Out-gate Pass No. 43230 dated 07.05.2020 Issued by Mundra International Container Terminal Private Limited - CFS, the time is mentioned as 05:27 Hrs, in respect of truck no. GJ12AY2409 and container no. BEAU4602301, which shows that the net weight of the impugned goods before leaving the CFS at Mundra was 12020 Kgs. Further, the impugned order does not mention the letter dated 18.05.2020 issued by the Shipping Line vide which it was Informed that due to lockdown, they had to forgo the loading from the Warehouse No. 2 at the supplier's end resulting in short shipment of the consignment. Accordingly, it is observed that the impugned order has been passed without taking into consideration the relevant documents, i.e., (a) Weighment Slip dated 07.05.2020 Issued by Mundra International Container Terminal Private Limited before leaving the Mundra CPS, and (b) letter dated 18.05.2020 issued by the shipping line. These documents are of crucial importance for determining the issue of clandestine removal of goods imported vide BOE 1. Hence, it would be in the interest of justice that the matter on this issue is remanded back to the adjudicating authority for fresh consideration after examining the contentions made by the appellant.”

24.2 Therefore, in view of the directions imparted by Hon'ble Commissioner (A), the following documents are to be considered for examination:-

- (a) Weighment Slip dated 07.05.2020 issued by Mundra International Container Terminal Private Limited before leaving the Mundra CPS, and
- (b) letter dated 18.05.2020 issued by the shipping line.

24.3 In this regard, on perusal of the Weighment slip dated 07.05.2020 issued by Mundra International Container Terminal Private Limited, it is seen that the weight of Cargo is 12020 Kgs. Further on perusal of the Weighment Slip dated 07.05.2020 issued by Sky High Weigh- Bridge at the gate of KASEZ, it is seen that the weight of cargo was 12070 Kgs. It is pertinent to note that there was a mis-match of seal number on the container. On physical verification of seal intact with the container, the number was 'A439805', however, as per the bill of entry the seal number was declared as 'A434805'. The submission of the noticee is silent on this. Change in Seal number clearly establishes that the imported goods have been pilfered. Further, in this regard, I find that the Shipping line vide letter dated 18.05.2020 intimated the shortage of goods shipped in the subject container. However, there is no correspondence from the Exporter M/s. Worldwide USA, who had issued the invoice No. CKLUS00004341 for the export of 15015 Kgs of goods to M/s. Palmon Exports. In this regard, it is pertinent to note that in all the documents viz. BoE No. 1003629 dated 09.04.2020, IGM No. 2249986 dated 21.03.2020, Sea Way Bill No. ONEYRICA55316500 dated 22.02.2020, Out Gate Pass No. 43230 dated 07.05.2020, the number of packages was 137 only which shows that the importer had deliberately showed the number of packages as same across all the documents which, without an iota of doubt, establishes the malafide intention of the importer to clandestinely remove the imported goods and cause a huge loss to the exchequer. Further the letter dated 18.05.2020 provided by the shipping line is clearly an afterthought as the shipping line had intimated that due to lockdown, they had to forgo the loading from the Warehouse No. 2 at the supplier's end resulting in short shipment of the consignment. Had this been the case, the number of packages should not have been same across all the documents. Further the importer had never intimated the department about such shortage before the initiation of investigation. This shows that the importer was well aware of such shortage as the Bill of Entry was filed on 09.04.2020 and the investigation was initiated on 08.05.2020.

24.4 I further find that the importer has failed to provide the revised Packing list which could substantiate their claim. It is also important to note that the importer has not provided documents or details which could establish the amount paid/remitted to the exporter towards the subject Bill of Entry or invoice issued by the exporter. It is amply clear that the importer during the investigation has tried to mislead the investigation and also did not cooperate in the investigation. Therefore, I find no reason to believe the argument of the noticee/importer that there was no diversion of goods.

24.5 In respect of **BoE No. 2 i.e. Bill of Entry No.1014089 dated 01.10.2019**, the Hon'ble Commissioner (A) in Para 8.5 of the order has observed as reproduced below

"8.5. As regards the fourth issue, I find that the appellants have challenged the impugned order pertaining to the goods imported vide BOE 2 as the weighment slip in respect of the goods lying at their premise at the time of examination were not made available to them. In this regard, I find that as per Panchnama dated 09.05.2020 drawn

at the premises of Appellant No. 1, the goods seized in respect of both the BOEs were not weighed owing to insufficient number of labours on account of lockdown imposed at the time, and, therefore, only counting of the goods was done. Further, nowhere in the impugned order it was mentioned about the weighment procedure for calculating the differential weight in respect of goods imported vide BOE-2 except the observations at Para 6.1, 6.2 & 12 of the SCN and Para 22 of the impugned Order wherein it is discussed that "the physical weighment was conducted under preventive supervision at the appellant's premise. However, it was nowhere mentioned that whether it was made available to the appellants or not. It is observed that the allegation of clandestine removal of the imported goods is of very serious in nature and all such documents, proving the Appellant No. 1's malafide intention, is required to be made available to them to meet the ends of justice. Therefore, the weighment slip, showing the weight of available goods imported vide BOE-2 at the time of examination, is of crucial importance for establishing charge of clandestine removal upon the Appellant No. 1. As part of natural justice, the copy of weighment slip in respect of goods imported vide BOE-2 needs to be provided to the appellants. Hence, it would be in the interest of justice that the matter on this issue is remanded back to the adjudicating authority for consideration after providing the appellants with the copy of weighment and obtaining comments of the appellant thereon."

24.6 This office vide letter dated 13.08.2024 requested the office of KASEZ, Gandhidham to provide weighment slip in respect of Bill of Entry No. 1014089 dated 01.10.2019. In response to the same, this office received the weighment slips from the office of KASEZ which were forwarded to M/s. Palmon Exports to offer comments on the same. However, M/s. Palmon exports vide email dated 06.09.2024 reiterated their earlier submission that they did not want physical possession of the goods and requested this office to sell the confiscated goods. It is pertinent to note that they acknowledged the receipt of weighment slips however did not offer any comments on the same.

24.7 It is amply clear that on perusal of the records of the SEZ online module, it was observed that the noticee had not filed any documents for Export/ DTA sales/ Intra zone sale of goods during the period i.e. from 01.10.2019 to 17.07.2020 (Date of filing of Bill of Entry No. 1014089 dtd 01.10.2019 and date of conducting of physical weighment of goods at the noticee's premises under preventive supervision). It is also observed that as per the physical weighment conducted under preventive supervision for goods imported vide Bill of Entry No. 1014089 dated 01.10.2019, goods weighing 11339.61 Kgs were found at the noticee premises, whereas the goods received vide said Bill of Entry was 14710 Kgs. Therefore, it is clear that the quantity of goods found short has been cleared by the noticee clandestinely with intent to evade the payment of customs duty.

24.8 In view of the above discussion and findings, I hereby hold that the noticee is liable to pay duties of Customs under Section 28(4) of the Customs Act, 1962 read with Rule 34 of SEZ Rules, 2006. Therefore, on the short quantity of seized goods totally valued at Rs. 67,51,281/- in respect of subject bills of entry, the total Customs Duty comes to Rs.11,17,337/- as detailed below:-

(Amount in Rs.)

Sr. No.	Bill of entry No./ date	Short quantity received (In kgs)	Value of short quantity	Duty
1.	1014089/ 01.10.2019	3370.39	3552391	587921
2.	1003629/ 09.04.2020	3035	3198890	529416
		6405.39	6751281	1117337

25. Recovery of interest under Section 28AA of the Customs Act, 1962.

It is proposed in the SCN to demand and recover interest under Section 28AA of the Customs Act, 1962 on the Customs Duty amounting to Rs. 11,17,337/- The Section 28AA ibid provides;

“SECTION 28AA. Interest on delayed payment of duty— (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and
 (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

As I have already held that the Customs Duty amounting to Rs. 11,17,337/- is recoverable under Section 28(4) of the Customs Act, 1962 read with Rule 34 of SEZ Rules, 2006, interest on the said Customs Duty is required to be levied and recovered under Section 28AA of the Customs Act, 1962. Noticee has not refuted the aspect of payment of interest on the duty short paid as above. And therefore, I hold accordingly that the interest is required to be recovered.

26. Liability on the Noticee of penalty under Section 114A of the Customs Act, 1962.

In the SCN it is proposed upon the noticee to liable penalty under Section 114A of the Customs Act, 1962 in respect of the short quantity of goods equal to duty for the said goods and interest thereon.

In respect of the said short quantity of the impugned goods imported vide Bills of Entry Nos. 1003629 dated 09.04.2020 and 1014089 dated 01.10.2019, the noticee had knowingly and intentionally mis-declared the imported goods and filed documents with the Customs authorities, which they knew, were false and incorrect in respect of the description and quantity of the imported goods and also cleared the goods without payment of duty. By this way, the noticee has suppressed the facts from the department. They have not put forth any defense submission in this regard. Hence, the said acts on their part have rendered them liable to penalty under Section 114A of the Customs Act, 1962. And I hold accordingly.

27. In view of the foregoing discussions and findings, I pass the following order-

ORDER

- (i) I determine and confirm the demand of Customs Duty amounting to Rs. 11,17,337/- (Rupees Eleven Lakhs Seventeen Thousand Three Hundred and Thirty Seven Only) and order to recover the same from the noticee as detailed in Table-G read with Annexure A & B to the SCN on the short quantity of goods in respect of Bill of Entry No. 1003629 dated 09.04.2020 and Bill of Entry No. 1014089 dated 01.10.2019 under Section 28(4) of the Customs Act, 1962 read with Rule 34 to the SEZ Rules, 2006
- (ii) I order to recover applicable interest on the amount confirmed above at (i) under Section 28AA of the Customs Act, 1962.
- (iii) I impose penalty equal to duty and interest confirmed above on M/s. Palmon Exports, KASEZ, Gandhidham under Section 114A of the Customs Act, 1962.

28. This order is issued without prejudice to any other action that may be taken against the above mentioned firms or person or any other person, in this regard, under Customs Act, 1962 or under any other law for the time being in force.

(Dev Prakash Bamanavat)
Additional Commissioner
Customs House- Kandla

To,

1. M/s Palmon Exports, Shed No. 186-187, Sector I, Kandla Special Economic Zone, Gandhidham-370230

Copy to:

1. The Deputy Commissioner of Customs, KASEZ.
2. The Deputy/Assistant Commissioner (RRA/TRC) Custom House, Kandla.
3. The Superintendent (EDI), CH, Kandla with a request to upload the order on the official website of this Commissionerate.
4. Guard File